



September 26, 2002

Ms. Susan C. Rocha
Denton, Navarro & Bernal
1700 Tower Life Building
310 South St. Mary's Street
San Antonio, Texas 78205-3111

OR2002-5426

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 169359.

The San Antonio Water System ("SAWS") received a request for "records detailing SAWS employees fired and/or disciplined relating to the River Road Sewage incident." You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, and 552.137 of the Government Code. Additionally, you have requested a decision from this office pursuant to section 552.305 of the Government Code, which allows governmental bodies to rely on third parties having a privacy or property interest in the information to submit their own arguments as to why the requested information is excepted from public disclosure. *See Gov't Code § 552.305.*¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an interested third party. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

¹Section 552.305(d) requires the governmental body to make a good faith effort to notify a person whose proprietary interests may be implicated by a request for information where the information may be excepted from disclosure under section 552.101, 552.110, 552.113, or 552.131. The governmental body is not required to notify a party whose privacy, as opposed to proprietary, interest is implicated by a release of information. *See Gov't Code § 552.305(d).*

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"² The test of employee privacy under section 552.102 is the same as the test under section 552.101 in conjunction with common-law privacy.³ Under section 552.101, common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Because of the greater legitimate public interest in matters involving employees of governmental bodies, privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature." See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Thus, public employee privacy under section 552.102 is "very narrow." See Open Records Decision No. 400 at 5 (1983).

Generally, the work behavior of a public employee and the conditions for his or her continued employment are matters of legitimate public interest not protected by the common-law right of privacy. Open Records Decision Nos. 438 (1986). Similarly, information about a public employee's qualifications, disciplinary action and background is not protected by common-law privacy. See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of his resignation or termination), 423 at 2 (1984) (information may not be withheld under section 552.102 if it is of sufficient legitimate public interest, even if person of ordinary sensibilities would object to release on grounds that information is highly intimate or embarrassing), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or

² Anything relating to an individual's employment and its terms constitutes information relevant to the individual's employment relationship and is a part of the individual's personnel file. See Open Records Decision No. 327 at 2 (1982).

³ Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

common-law right of privacy). We find that the public has a legitimate interest in the submitted information. Therefore, SAWS may not withhold this information under section 552.101 or 552.102.

You also claim that sections 552.117 and 552.1175 except portions of the requested information from public disclosure. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Similarly, section 552.1175 excepts home addresses and telephone numbers, social security numbers, and family member information of peace officers, county jailers, Texas Department of Criminal Justice employees, and commissioned security officers. However, the submitted documents do not contain the type of information to which those sections are applicable.

You further claim that section 552.137 excepts some of the submitted information from disclosure. Section 552.137 provides that “[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.” Gov’t Code § 552.137(a). The submitted information, however, does not contain an e-mail address of a member of the public. Thus, section 552.137 is inapplicable to the submitted information. Therefore, the submitted information must be released in its entirety to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

Ms. Susan C. Rocha - Page 5

CN/jh

Ref: ID# 169359

Enc. Submitted documents

c: Mr. Brian Collister
1031 Navarro
San Antonio, Texas 78205
(w/o enclosures)

Mr. Valentin T. Ruiz, Jr.
2906 Rocky Oak
San Antonio, Texas 78232
(w/o enclosures)

Mr. Scott Halty
8106 Robin Rest Drive
San Antonio, Texas 78209
(w/o enclosures)

Mr. Jerry Berry
17310 Happy Hollow
San Antonio, Texas 78232
(w/o enclosures)

Mr. Kenneth Mahaffey
13542 Hollow View
San Antonio, Texas 78232
(w/o enclosures)

Mr. Jeffrey McNeely
7107 Autumn Park
San Antonio, Texas 78249
(w/o enclosures)

Ms. Susan C. Rocha - Page 6

c: Mr. Wade O'Neal
11954 Autumn Vista
San Antonio, Texas 78249
(w/o enclosures)